



MEMORANDUM NOTE DE SERVICE

TO
À Deputy Prime Minister and Minister of Finance

FROM
DE Michael Sabia

SUBJECT
OBJET Potential measures to address the use of Canada's financial system to fund activities harmful to Canada's economy.

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For information.

- 1. Issue:** Recent activities in Canada have highlighted the use of Canada's financial system to fund activities that are harmful to Canada's economy. This note presents two legislative options to address this issue together with next steps.
- 2. Financial Implications:** None.
- 3. Recommendation:** None.
- 4. Timing Considerations:** At Minister's discretion.

Background

This memorandum sets out legislative amendments that would provide the government with additional tools to address the issues surrounding the use of the financial system to support activities that cause significant harm to the Canadian economy.

Potential Legislative Measures

1. *Proceeds of Crime (Money Laundering) and Terrorist Finance Act (PCMLTFA)*

Recent activities have highlighted that certain entities such as crowdfunding platforms (e.g., GoFundMe, Patreon, etc.) and some payments processors (e.g., PayPal, Square, Moneris, Stripe, etc.) are not currently captured under the PCMLTFA. The risks associated to crowdfunding

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platforms and payments processors have already been assessed as being medium and high respectively in the government's most recent update to the *Assessment of Inherent Risks of Money Laundering and Terrorist Risks in Canada*.

The PCMLTFA could be broadened to cover crowdfunding platforms and all payment processors. While broadening the coverage would not modify any powers of the Minister or FINTRAC nor change the purpose of the Act; it would however ensure that these entities are subject to obligations under the PCMLTFA which include:

- Customer due diligence, such as verifying the identity of persons and entities involved in certain transactions.
- Recordkeeping, including related to accounts, transactions, and client identification.
- Reporting to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), including large value (above \$10,000) and suspicious transactions.

As such, extending PCMLTFA requirements to crowdfunding activities and payment processors facilitating crowdfunding would help mitigate risks that these platforms receive illicit funds, increase the quality/quantity of intelligence received by the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), and make more information available to support investigations by law enforcement. While foreign crowdfunding platforms and PSPs would be captured, enforcement of regulatory requirements under the PCMLTFA would be limited. For example, there will be no compliance exams conducted outside of Canada and ability to enforce administrative monetary penalties (AMPs) will be restricted. However, similar to requirements for foreign money services businesses, there is a requirement for registration with FINTRAC and to have an officer/office in Canada. In addition, enforcement based on this intelligence produced by FINTRAC will fall to the RCMP and other policing bodies which already have high demand for their resources.

FINTRAC does not have the authority to track or monitor financial transactions in real time, nor does it freeze assets or investigate potential criminal activities. The RCMP and other policing bodies would remain responsible for investigating crime.

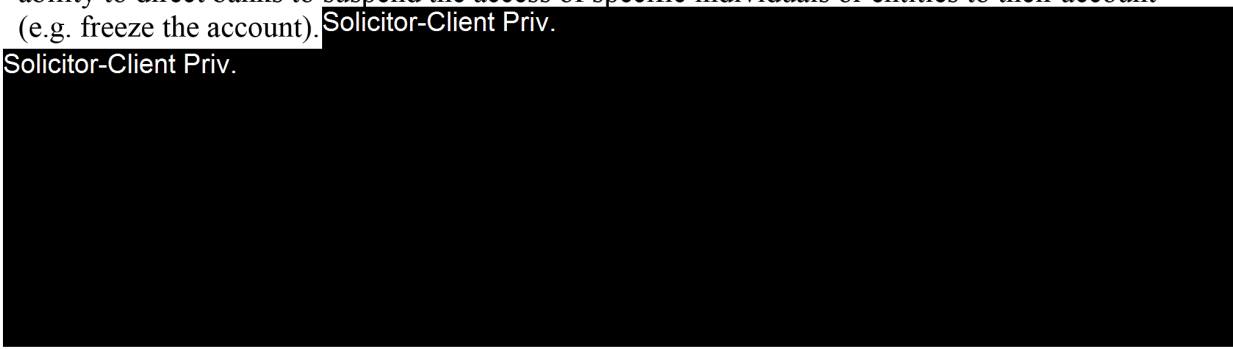
2. *Bank Act*

The second measure would leverage your responsibility over the banking sector. It would involve creating a new authority in the *Bank Act* that would enable the Governor in Council to issue binding directives to banks in cases where the Minister of Finance is of the opinion that such an order would be necessary to maintain the strength and security of the national economy, and/or to protect Canada's national security and the safety of Canadians. We have developed two options.

Option 1

This option would provide the Governor in Council with a broad authority that includes the ability to direct banks to suspend the access of specific individuals or entities to their account (e.g. freeze the account).

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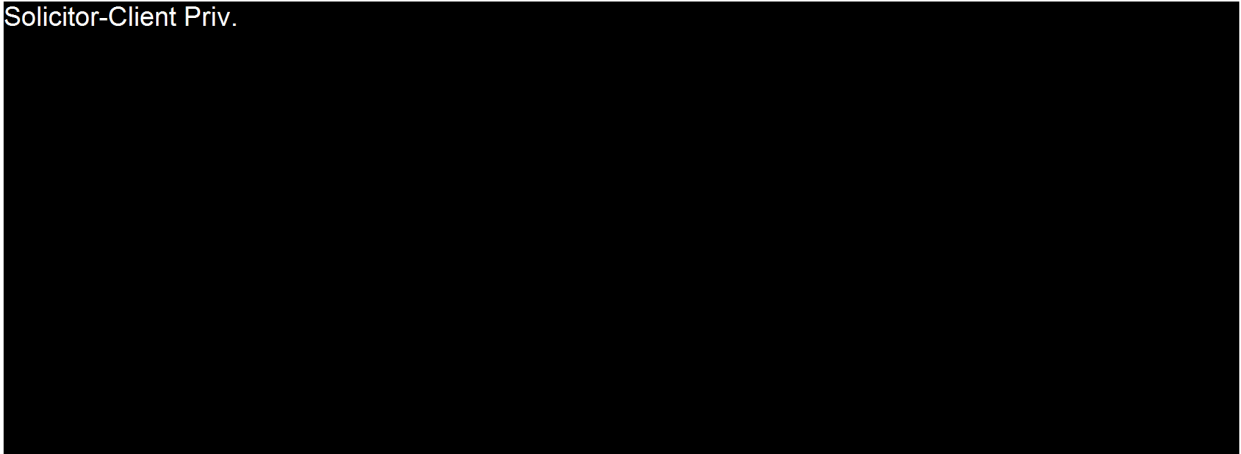


Option 2

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an alternative option would be to provide the Governor in Council with a general authority, which could be used to direct banks to conduct a review of their existing business relationships to ensure that those business relationships do not further the activities related to those threatening the economy and do not undermine the integrity of the financial sector. The measure would provide banks with the ability to suspend access to accounts on a temporary basis (e.g. the duration of the GIC order) if they suspect an account is being used to further an illegal activity.

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Considerations

These measures will be helpful and will make available to the government additional tools to address the current issue by increasing the quantity and quality of intelligence received and by giving a strong signal that the government is serious about taking measures to counter the illicit use of funds. As the amendments to the *Bank Act* are novel, consumers may raise concerns. Canadians generally expect to have access to their funds except in rare circumstances (e.g. as a

result of a court order or the Canada Revenue Agency asking for a freeze). Some Canadians may also see interference in their banking relationships, for what may not be illegal activity sanctioned by an independent tribunal, as an overreach by the Government. Banks may also have some concerns and it will be important to talk with them.

Next Steps

Subject to your views on the above, immediate next steps would be to finalize drafting instructions and table these amendments as quickly as possible should the government decide to do so.

We are mindful of the growing role of cryptocurrency in funding these types of activities, which is complex and requires further examination. As such, we will undertake a comprehensive review and return to you with advice.

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